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10/567,860	02/10/2006	Nobuaki Yagi	040894-7392US	5562
9629	7590	05/27/2009	EXAMINER	
MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				LOW, LINDSAY M
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/567,860
Filing Date: February 10, 2006
Appellant(s): YAGI, NOBUAKI

David E. Connor
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 20th, 2009 appealing from the Office action mailed July 24th, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,791,543	UDAGAWA et al	8-1998
3,056,965	ROGERS	10-1962
4,629,106	HOWARD et al	12-1986

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Udagawa et al (5,791,543) in view of Rogers (3,056,965), Howard (4,629,106), and Admitted Prior Art.

Udagawa discloses the same invention including a table link 152 rotatably provided in a base, a paper-pressing table 100 attached to the table link 152, movable clinchers 401 and 402, a fixing pin 101 on a side surface of the table link 152, a fixing plate 152A that is linearly slidable with respect to the fixing pin 101, a driver 321 to drive the staples into paper by pressing against the table 100, clincher links 410 and 411 that rotate to move the clinchers 401 and 402, clinch levers 431 that rotate downward to press the clincher links 410 and 411, and a pressure reducing mechanism (shown in Fig. 22) to reduce the pressure by the clinch levers 431.

Udagawa fails to disclose the table link and fixing plate being separate members. However, Rogers and Howard are provided as evidence to support examiner's Official Notice from paragraph 7 of the Final Rejection mailed July 24th, 2008 that it would have been obvious to form a structure that has two separate parts, since it has been held that constructing a formerly integral structure into various elements involves only routine skill in the art. Note that the contact trip mechanism of Rogers is made up of two pieces 48 and 49 that move relative to each other, while the contact trip mechanism of Howard is made up of one piece that moves as one. Note that both of these contact trip mechanisms perform the same function of allowing the trigger to be actuated for firing of

a fastener. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the table link and the fixing plate as two separate members in order to facilitate assembly of the device.

Regarding claim 2, the pressure reducing mechanism includes a sector shaped cam 514 where the periphery of it is engaged with the clinch lever 431. The sector shaped cam 514 has a stepped portion formed on its periphery as shown in Fig. 22. As the cam is engaged with the clinch levers 431, the pressure is reduced on the clincher links 410 and 411.

Regarding claim 3, Udagawa discloses the invention substantially as claimed except for having first and second cams. However, Examiner gave Official Notice for such feature which applicant did not adequately traverse; therefore, such feature is deemed to be admitted prior art (see MPEP 2144.03). It would have been obvious to one having ordinary skill in the art to have provided another clinch cam to Udagawa's stapler so that each clinch mechanism (both can be seen in Figure 23) can be moved with its own cam and rotated together to clinch the staple.

(10) Response to Argument

Appellant argues that it is impossible for the designated fixing plate to lock the table link if they are integrated portions of the same member, as in Udagawa. Appellant further argues that the fixing plate and table link cannot be relatively moveable to each other if they are the same member. However, referring to Udagawa, movement of fixing plate 152A and table link 152 lifts fixing pin 101 thereby lifting paper-pressing table 100 to engage and lock against the driver 321, i.e. a paper-pressing state. Examiner

asserts that claims are given their broadest reasonable interpretation consistent with the specification. In this instance, claim 1 states, “a fixing plate... engageable with the fixing pin to lock the table link in a paper-pressing state. Referring to col. 8 lines 1-12, movement of the fixing plate 152A causes movement of table link 152, which in turn lifts and locks fixing pin 101 and table 100 towards a paper-pressing state. Therefore, it is deemed possible for the fixing plate to move and lock the table link in a paper-pressing state as integrated portions. In any event, however, as Udagawa discloses the fixing plate and the table link as an integral member, examiner gave Official Notice that it would have been obvious to form a structure has two separate parts, since it has been held that constructing a formerly integral structure into various elements involves only routine skill in the art. Furthermore, to support the Official Notice, the examiner has provided references Rogers and Howard to show that a mechanism formed as two parts and formed as one part performing the same function. Therefore, Udagawa’s modified device has the fixing plate and the table link as two separate members.

Appellant argues that the Official Notice is not appropriate because the alleged facts are not well-known in the art. However, although it has been held that constructing a formerly integral structure into various elements involves only routine skill in the art, the examiner has provided Rogers and Howard as evidence to show a contact trip mechanism being formed as one part and two parts while performing the same function.

Appellant argues that the fixing plate and the table link cannot be made separate in Udagawa because they perform very different operations where the table link

connects the table to the stapler body and the fixing plate slides in a wedge shape along a guide groove. However, it should be noted that Udagawa's table link 152 also connects the table 100 to the stapler body (see Fig. 3). In addition, it should be noted that claims are given their broadest reasonable interpretation consistent with the specification. In this instance, the claims do not require the fixing plate to slide in a wedge shape along a guide groove to place the table link in a paper-pressing position. As discussed above, the fixing plate does place the table link and the table in a paper-pressing state, as the fixing plate moves the table link, thus lifting the table.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/L. M. L./
Examiner, Art Unit 3721

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/Henry Yuen/
Special Programs Examiner, TC 3700

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Supervisory Patent Examiner, Art Unit 3721